

**DELAWARE REAL ESTATE COMMISSION
861 Silver Lake Boulevard
Dover, Delaware 19904**

**Non - Residential Property Management¹
Part II Course Objectives**

Course Description: A minimum three – hour program to acquaint the sales licensee with duties and responsibilities of property management; Review types of properties, principles, documents, and agency relationship; Review legal requirements of leasing and management; Review property manager functions including tenant relations, rent collection, and maintenance; Review duties, ethics, and risk management of the property manager.

Instruction: The curriculum requires three certified instructors: 1) a practicing Delaware resident licensee with a minimum of five years experience in the property management field; 2) a Delaware attorney with an expertise in real estate law issues; 3) a Delaware licensed property and casualty insurance professional.

I LEGAL REQUIREMENTS.....page 4

- A Landlord – Tenant Code
- B Fair Housing Act
 - 1. Title VIII of the Civil Rights Act of 1968, amended 1974 & 1978
 - 2. Fair Housing Act restrictions
 - 3. Fair Housing Act practices
 - 4. Fair Housing Act advertising guidelines
 - 5. Fair Housing Act enforcement provisions
- C Americans With Disabilities Act
 - 1. Employment – Title 1
 - 2. Building Requirements – Title 3
- D Delaware Statute Regarding Agricultural Leases
- E Manufactured Housing Leases and Landlord – Tenant Code
- F Courts of Jurisdiction
 - 1. Justice Of the Peace Court
 - 2. Building Requirements – Title 3

¹ The outline and teaching materials were prepared by a sub-committee of the Delaware Real Estate Commission and are solely for educational purposes. The outline and materials contained herein do no constitute legal opinion or advice and should not be relied upon for such purposes.

G Zoning Regulations

1. Use
2. Bulk Regulations
 - (a) Size Limitations
 - (b) Parking Requirements
 - (c) Setback Requirements
 - (d) Height Limitations
 - (e) Coverage Ratio

II Duties to the Client.....page 15

A Financial Management

1. State Escrow Management Statute
2. Security Deposit Management
3. Internal Accounting Practices
4. Internal Money Management

B Physical Management (Structure and Grounds)

C Administrative Management (Files and Records)

D Asset Management Valuation Issues

1. Market Rent
2. Market Cap Rate
3. Recent Sales

III Ethics.....page 15

IV Maintaining Client's Investment.....page 16

A Interviewing tenants, advertising, rental applications, credit reports, financial statements, setting rates (Residential and Commercial examples)

B Rent collection : time, place, penalty and cancellation provisions

C Budgeting and expense control procedures

D Accounting Procedures

E Property manager/owner relations

F Hiring and supervision of employees

1. Staffing requirements
2. Physical property requirements
 - (a) Preventative Property Maintenance
 - (b) Corrective and Routine Property Maintenance

V	Default, Correction & Notice.....	page 17
A	Lessee's Default Triggers	
B	Lessor's Default Triggers	
C	Correction of Default (s)	
D	Notification of Default (s)	
E	Notification of Termination of Lease for Default (s)	
VI	Sources of Property Management Business.....	page 19
VII	Risk Management.....	page 20
A	Avoidance	
B	Control	
C	Transfer	
D	Retain	
VIII	Insurance Provisions.....	page 21
A.	Fire and hazard	
B.	Consequential	
C.	Contents/Personal Property	
D.	Liability/Worker's Compensation Acts	
E.	Casualty	
F.	Surety Bonds	
G.	Claims Procedures	
IX	Review a Property Management Agreement.....	page 23
X	Discussion, Questions, & Answers.....	page 23
Summary		
Exhibits		
A.	Simple Property Management Agreement	
B.	Sophisticated Property Management Agreement	

NON-RESIDENTIAL PROPERTY MANAGEMENT PART II

I. Legal Requirements

A. Landlord- Tenant Code

1. Commercial leases are exempt from all provisions of the Delaware Residential Landlord-Tenant Code except that commercial evictions (Summary Proceeding for Possession) are controlled by Chapter 57 Summary Possession, 25 Del. C. §5701, et seq., of the Residential Landlord-Tenant Code and Distress for Rent Actions are covered by Ch. 63 of the Residential Landlord-Tenant Code, 25 Del. C. § 6301, et seq. The Delaware Commercial Landlord-Tenant Code only has five sections:
 - a. 6101- Meeting and charges for Utility Services
 - b. 6102- Definitions
 - c. 6103- Preference of Rent in Cases of Execution
 - d. 6104- Confession of Judgment
 - e. 6105- Taxes paid by tenant; setoff against rent; recovery from owner.

B. Fair Housing Act-

The concept of Fair Housing seems simple enough. One may not discriminate based on specific criteria. However, the day-to-day practical application of Fair Housing can be fraught with misunderstanding and misinformation. Topics such as advertising, property management issues and the fact that many states have included additional categories to the protected classes list can confuse the even most savvy property manager or REALTOR.

Article 10 of the NAR Code of Ethics

REALTORS shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin.

REALTORS shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status or National origin. (Amended 1/90)

REALTORS, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. (Amended 1/2000)

1. Title VIII of the Civil Rights Act of 1968, amended 1974 and 1978
 - (a) Civil Rights Act of 1866-
Following the Civil War, Congress passed a series of laws to implement the 13th Amendment banning slavery and to eliminate its vestiges. One of these laws, the Civil Rights Act of 1866

banned discrimination in the sale, transfer, lease or use of property, including real estate and housing. All citizens were granted the same rights enjoyed by white citizens in the use, purchase, lease, transfer, etc., of real estate and property. In a 1968 decision that is still applicable today, The United States Supreme Court held, in *Jones v. Mayer*, that the 1866 Act prohibits all forms of racial discrimination in real estate, whether committed by government or private parties. Persons suing under the 1866 Act are entitled to recover actual and punitive damages, and their attorneys' fees and costs.

(b) Fair Housing Act-

The federal law passed in 1968 which strove to ensure equal housing opportunity for all, making it illegal to discriminate on the basis of race, color, religion, sex, or national origin. The Act was amended in 1988 and extended protection to families with children and persons with disabilities.

The Seven Fair Housing "Protected Classes" resulting from the Amendments of 1988 include race, color, religion, sex, national origin, disability, and familial status. Also, state and local governments may have additional laws and categories.

2. Fair Housing Act Restrictions-

Perhaps the most critical mistake you can make is to base your leasing or marketing decisions on prospective tenants' membership- or non-membership- in any of the classes protected by the federal Fair Housing Act or by your state's fair housing laws.

This means you can't focus your business plan or advertising tactics only on Hispanics or Arab Americans and exclude African Americans, Asians, or Caucasians, for example. Likewise, you can't market your services only in Christian-oriented publications or on television, even if you prefer to target only those who want a Christian salesperson. (Note that advertising restrictions under the Fair Housing Act apply to all forms of print and electronic media.)

Practitioners who want to specialize in senior housing and issues such as retirement and reverse mortgages face a similar challenge. Even though you may legally make customers aware you have a special expertise that can benefit seniors, you must make this knowledge available to anyone who has an interest in your skills, regardless of age or familial status. And unless a community is qualified as senior housing under HUD regulations, you must never refuse or forget to show families with children properties just because many seniors live there.

The rule not to market on the basis of membership in a protected class applies even if the protected class is one that you belong to. Also note that the Fair Housing Act makes it illegal for anyone in a brokerage office to be designated as the associate who automatically services all clients who are of the same ethnic or racial background as the associate.

Does that mean then that you can't let tenants or owners know that you're fluent in the language they speak? Not at all. Under the Fair Housing Act, there's nothing wrong with marketing yourself as having certain language skills. So long as you pitch your services to the population at large, not just to those ethnic groups who speak your language, it's fine to indicate in your promotions that you speak Arabic, Spanish, or whatever.

Then prospects can decide to choose you because you share a similar language, religion, or background, and you're not choosing them based on some similarity they have with you.

There are other strategies you legally can use under the Fair Housing Act. First, you're usually on safe ground if you focus on a property-related niche instead of a client-related one. A niche marketing plan that's based on any of the following property types is perfectly lawful and can be quite effective: Fixer-uppers, Condominiums, Single-family homes, Resort Housing, Properties in foreclosure, Environment-friendly buildings, Golf course communities, or Homes on the historic register.

Second, you can focus on individuals' specific needs that are not covered by fair housing: relocation, interesting living near particular hobby or sports offerings, and level of understanding about the buying and selling process. It's perfectly lawful, for example, to market empty-nest tenants so long as you don't make assumptions about likelihood of any group- such as recent Hispanic or Asian immigrants- being empty-nesters.

So, you see, it's possible to follow the advice of the marketing gurus and target a niche without violating the Fair Housing Act. But be inclusive in your marketing, allowing perspective tenants and clients to choose whether they want you to represent them. As for the questions not yet answered by HUD or the courts, play it safe and abide by clear-cut rules.

2. Fair Housing Act Practices-
Educate owners about fair housing laws and explain what they mean in property management transaction

Treat all prospective tenants in substantially the same way. Use the same approach and manner to greet people, show properties, qualify prospects, obtain management contracts, conduct open houses, present lease offers, keep records, and follow up with tenants.

Use forms or checklists to standardize the questions you ask and the information you request from prospective tenants.

Market your properties to a diverse group of prospective tenants. Avoid using exclusionary words or pictures. Any marketing plan that indicates a preference or limitation or discriminates on the basis of race, color, religion, sex, handicap, familial status or national origin violates the Fair Housing Act.

Allow prospective tenants to select their own preferred neighborhoods. Never “steer” prospects toward or away from any neighborhood, however subtly. Offer every prospect a variety of housing choices.

Contact local fair housing organizations and REALTOR associations for information about fair housing compliance and compliance self-testing. Fair housing guidance is posted online at NAR’s Library, the U.S. Department of Housing and Urban Development, and The National Fair Housing Advocate.

Be vocal and be proactive in expressing your own personal commitment to fair housing.

Include a statement in your advertising stating your company doesn’t discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status. A statement isn’t absolute protection against liability for noncompliance, but it can be used as evidence of your company’s commitment to fair housing.

You can’t control the prejudices of others, but discriminating in any way, even at the request of an owner/client, is illegal. If an owner/client wants you to discriminate, walk away from the relationship.

4. Fair Housing Act advertising guidelines-
Be careful not to exclude any of the protected classes etc.
5. Fair Housing Act enforcement provisions-
About Fair Housing And Equal Opportunity (FHEO)

The mission of FHEO is to create equal housing opportunities for all persons living in America by administering laws that prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, age, disability, and familial status.

The Office of Fair Housing and Equal Opportunity administers federal laws and establishes national policies that make sure all Americans have equal access to the housing of their choice.

Particular activities carried out by the Office of Fair Housing and Equal Opportunity include implementing and enforcing the Fair Housing Act and other civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education amendments Act of 1972, and the Architectural Barriers Act of 1968.

Additionally, FHEO:

- (a) Manages the Fair Housing Assistance Program, administer the award and management of Fair Housing Initiatives Program grants, and propose fair housing legislation;
- (b) Works with other government agencies on fair housing issues;
- (c) Reviews and comments on Departmental clearances of proposed rules, handbooks, legislation, draft reports, and notices of funding availability for fair housing considerations;
- (d) Interprets policy, processes complaints, performs compliance reviews and offers technical assistance to local housing authorities and community development agencies regarding Section 3 of the Housing and Urban Development Act of 1968;
- (e) Ensures the enforcement of federal laws relating to the elimination of all forms of discrimination in HUD's employment practices;
- (f) Conducts oversight of the Government-Sponsored Enterprises, Fannie Mae and Freddie Mac, to ensure consistency with the Fair Housing Act and the fair housing provisions of the Federal Housing Enterprises Financial Safety and Soundness Act; and

- (g) Works with private industry, fair-housing and community advocates on the promotion of voluntary fair housing compliance.

HUD investigates complaints of housing discrimination based on race, color, religion, national origin, sex, disability, or familial status. At no cost, HUD will investigate the complaint and attempt to conciliate the matter with both parties. If conciliation fails, HUD will determine whether “reasonable cause” exists to believe that a discriminatory housing practice has occurred. If HUD finds “no reasonable cause,” the Department dismisses the complaint. If HUD finds reasonable cause, the Department will issue a charge of discrimination and schedule a hearing before a HUD administrative law judge (ALJ). Either party may elect to proceed in federal court. In that case, the Department of Justice will pursue the case on behalf of the complainant. The decisions of the ALJ and the federal district court are subject to review by the U.S. Court of Appeals.

For DE, DC, MD, PA, VA, and WV:

Philadelphia Regional Office of FHEO
U.S. Department of Housing and Urban Development
The Wanamaker Building
100 Penn Square East, 12th floor
Philadelphia, PA 19107-3380
(215) 656-0663 ext 3241
1-888-799-2085
TTY (215) 656-3450

- 6. Broker/Agent responsibilities
Promote Fair Housing Company-wide by establishing a system for monitoring fair housing compliance among your associates.

Conduct fair housing training annually and as part of all new-associate orientation, and link to organizational meetings on fair housing.

Be sure that advertising complies with fair housing regulations.

Post “equal opportunity in housing” materials prominently.

Check regularly for updates on fair housing regulations at the federal and state levels.

Consider purchasing copies of books, pamphlets, articles, and brochures concerning Fair Housing compliance and distribute to your sales and leasing associates, clients, and prospective tenants.

C. Americans with Disabilities Act

1. Title III of The Americans With Disabilities Act of 1990, U.S.C. §12181 (the “ADA”) became effective on January 26, 1992 and requires both commercial landlords and tenants to take affirmative steps to provide physical access to “commercial facilities” and places of “public accommodation” to individuals with disabilities. The definition of a commercial facility under the ADA is broadly defined and includes virtually all privately owned places of business that affect commerce such as office buildings, shopping centers, warehouses, and factories. Places of public accommodation fall into 12 categories of entities which own, operate, or lease facilities where the general public obtains goods or services and includes restaurants and cafeterias, bars, theaters, auditoriums, most retail establishments, museums, parks, private schools, offices of accountants and attorneys, offices of insurance and health care providers and other providers of services. See generally, 28 C.F.R. Part 36.
1. Under the provisions of the ADA places of “public accommodation” are required to remove existing physical barriers to access if such removal is “readily achievable, or can be easily accommodated or carried out without much difficulty or expense”. This obligation for barrier removal applies to the entire facility of which the place of “public accommodation” is a part including the common entrance areas and parking facilities. 28 C.F.R. § 36.104. All new construction of commercial facilities and public accommodations must comply with the ADA regulations. However, owners and operators of existing commercial that are not also considered places of public accommodation are not required to retrofit existing buildings or provided auxiliary aids to the disabled.
2. The ADA regulations apply to building owners as well as to management companies, landlords, tenants, subtenants and any other entity that owns, leases, leases to, or operates a place of public accommodation. The ADA regulations further provide that the allocation of responsibility for compliance as between the landlord and the tenant may be determined by the parties. 28 C.F.R. § 36.201(b).
3. Listed below are some drafting considerations a landlord should consider while negotiating a lease with a prospective tenant involving a lease for a place of public accommodation:

- a. The landlord should not rely on the standard boilerplate compliance provision in a lease which does not also specifically address ADA issues.
 - a. Specifically address all ADA obligations, including accessibility, barrier removal or changes, provisions for auxiliary aids and services, and non-discrimination, covenants and subsequent alterations.
 - b. Any indemnification clause should include coverage for all damages, penalties, costs, and attorney's fees arising from the tenant's non-compliance with the ADA regulations.
 - c. The lease should include an affirmative obligation to include an ADA compliance provision in all construction and architectural contracts.
 - d. Who will be responsible for maintaining common areas subject to the ADA regulations that may exist in the premises of an individual tenant?
4. In the event a prospective or existing tenant proposes significant improvements or alterations to existing leased space, the landlord should also require, that all plans and specifications provided by the tenant shall comply with the ADA requirements and a statement to this effect should appear on any such plans and specifications. The Following sample ADA lease provision can be used as a beginning point in the landlord's negotiations with the tenant on ADA issues:
- a. The parties acknowledge and agree that the liabilities and obligations of the landlord and tenant under the federal statute commonly known as the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as the regulations and accessibility guidelines promulgated thereunder as each of the foregoing is supplemented or amended from time to time (collectively the "ADA") shall be apportioned as follows:

Tenant. From and after the commencement date of the Lease, Tenant covenants and agrees to conduct its operations within the Premises in compliance with the ADA. In the event Tenant elects to undertake any alterations to, for or within the Premises, including but not limited to the initial build-out work if such work is the responsibility of the Tenant to perform, then Tenant covenants and agrees to cause any such alterations to be performed and completed in compliance with the ADA. Tenant hereby covenants and agrees to indemnify and hold harmless Landlord and landlord's officers, directors, shareholders; partners, employees and agents from and against any and all claims, demands, causes of action, costs, expenses (including reasonable attorneys' fees and litigation costs) damages, fines, penalties and liabilities of any kind or nature whatsoever which are asserted

against or incurred by Landlord or other indemnified party hereunder and which are based upon, arise out of or relate to a breach of the foregoing covenants.

D. Delaware Statute Regarding Agricultural Leases

1. Agricultural Lease defined
 - a. "Agricultural land", "farmland" or rural land of 10 acres or more not within a city or municipality, capable of being farmed.
1. Term of Lease
 - a. Verbal lease/written leases expressing NO term
 - (1) Term is one year
 - (2) Terminates on next 12/31, unless it began after 9/1, the second 12/31 occurring
 - b. Notice to terminate where NO term expressed
 - (1) 4 months before end of term
 - (2) If no notice, then lease becomes year to year.
 - c. No Notice required if Lease states no notice required
 - d. 14 days notice to tenant residing in house on land
 - e. Termination when term is expressed in written lease
 - (1) 4 months by either party before end of term
 - (2) If no notice, lease becomes year to year
2. Rights of Grantees of Reversions or Remainders
 - a. Same rights as Grantors to enforce lease terms or action for waste.
3. Distress for Rent- Permitted
 - a. Distrant on crops found on premises and livestock.
 - b. Tenant must have title to items
 - c. Items under conditional sales contract or lease to Tenant are prohibited from being distrained upon.
4. Preference of Rent
 - a. Rent is paid first for up to one year's rent. Remaining debts of Tenant next in cases of execution on crops.
5. Removal of Hay
 - a. If Tenant brought hay onto property, Tenant may remove same amount at end of term.
6. Obstruction of tenant; Protection of Tenant's Crops
 - a. If land is being leased to a new tenant, old tenant is permitted to harvest existing crops.
7. Corn-Duty of Outgoing Tenant
 - a. Tenant can harvest up to time of giving up possession only. New Tenant gets remainder of harvest.
8. Rent Payable with Produce
 - a. If Tenant fails to pay rent, Landlord may levy on crops for rent payment.

9. Delivery of Produce to Landlord by Tenant
 - a. After Landlord has levied Tenant can either pay rent or deliver crop.
 10. Crops Reserved as rent
 - a. Where crops are to pay rent or portion thereof, Landlord has lien on crops.
 - (1) Lien remains with sale of crop.
 - (2) Lien remains upon death of Tenant.
 - (3) Lien not divested by bankruptcy of tenant.
 - b. Contract needs to be recorded to perfect the lien.
 11. Property Taxes are Setoff Against Tenant's Rent
 12. Disposition of Manure
 - a. In absence of Agreement, Tenant may not remove or sell manure
 - b. If Agreement permits removal, Tenant may not remove soil with manure.
 - c. Tenant can use manure as a Right of Possession.
 - d. Cattle Manure
 - (1) If Tenant supplies own feed to cattle, Tenant may remove manure.
 13. Timber Cutting
 - a. Cutting prohibited without agreement constitutes waste.
 14. Assignment of Farm Leases
 - a. Assignment prohibited without Landlord consent.
- E. The Manufactured Home Owners And Community Owners Act of 2003-
1. Section I- Purposes and Policies
 - a. Definitions. §7003
 - b. Exemptions. §7004
 - c. Required provisions in every rental agreement. §7006
 - d. Term of rental agreement and renewal procedures. §7007
 - e. Fees that landlord can charge and method of revision of charges. §7008
 - f. Utility Rates. §7008
 2. Section II- Termination By Either Party and Non-Renewal For Cause
 - a. Termination of rental agreement by Tenant during first month of occupancy; during first 18 months of occupancy §7009
 - b. Termination or non-renewal of rental agreement by landlord; due cause: Change in use of land
 - (1) A landlord may terminate a rental agreement for a lot in a manufactured home community before it expires or may refuse to renew an agreement only for due cause.

- (2) An intended change in use of the land of a manufactured home community.
 - c. § 7010A Termination or non-renewal of rental agreement by landlord; Due cause; Noncompliance.
 - (1) Non-payment;
 - (2) Other monetary instances of repeated violations;
 - (3) Non-compliance;
 - (4) Termination for repeated instances of non-compliance with monetary obligations, even if cured, this section may result in either the immediate termination of the rental agreement or the non-renewal of the rental agreement at its expiration.
 - (5) Now provides some grounds for immediate termination.
- 3. Section III- Delaware Manufactured Home Relocation Trust Fund §7012.
 - a. Nine member board created. §7012
 - b. Monthly assessment. The landlord shall collect the tenant's portion of the assessment on a monthly basis as additional rent.
 - c. Monies used to pay to relocate homes or dispose of abandoned homes §7013.
- 4. Section IV- Landlord Remedies
 - a. Holdover remedies after termination §7016.
 - b. Effect of unsigned agreement. §7017
 - c. Security deposits
 - (1) Method of collection and amount
 - (2) Procedure for use of deposit
- 5. Section V- Rules
 - a. Five recognized purposes
 - b. When effective
- 5. Section VI- Standards, Three types Recognized
 - a. New tenants standards. §7020(a)
 - b. Existing homes not for sale. §7020(b)
 - c. Existing homes for resale. §7020(c)
- 6. Section VII- Rent Increases and Home Transfer
 - a. No more than once during any 12 month period.
 - b. Rental agreement can be transferred if:
 - (1) Notice of intent to transfer is given;
 - (2) Home and tenant qualify to be in community;
 - (3) Two methods of treatment
 - (a) Existing tenant terminates;
 - (b) Existing tenant transfers the agreement.

F. Courts of Jurisdiction

- 1. Justices of the Peace Court
 - (a) exclusive jurisdiction for summary proceeding for

- possession (Eviction)
- 2. Court of Common Pleas
- 3. Superior Court
- 4. Court of Chancery

- G. Zoning Regulations
 - 1. Use
 - 2. Bulk Regulations
 - a. Size
 - b. Parking Requirements
 - c. Setback Requirements
 - d. Height Limitations
 - e. Coverage Ratio

II. Duties to the Client

- A. Financial Management
 - 1. State Escrow Management Statute
 - 2. Security Deposit Management
 - 3. Internal Accounting Practices
 - 4. Internal Money Management
- B. Physical Management (Structure and Grounds)
- C. Administrative Management (Files and Records)
- D. Asset Management Valuation Issues
 - 1. Market Rent
 - 2. Market Cap Rate
 - 3. Recent Sales

III. Ethics

- A. Relationship to Property Manager Client
 - 1. Type of Representation
 - 2. General Agency
 - 3. Employee
 - 4. Facilitator
- B. Relationship to Property Manager Customer
 - 1. Responsibilities
 - 2. Disclosure
 - 3. Fair Dealings
- C. Broker/Agent Responsibilities

1. Types of Agency
 - a. Special
 - b. General
 - c. Universal
 2. Responsibilities
 3. Sub Agency
- D. Ethical principles, rules and standards of conduct for the property manager
1. The Code of Ethics
 2. Duties to Clients
 3. Duties to Customers
 4. Duties to Other Agents

IV. Maintaining Client's Investment

- A. Interviewing Tenants
1. Prospective tenant's business operations should be in harmony with existing tenants yet not in direct competition thereby allowing for diversification and profitability of the property owners investment. Marketing should include on-site signage and print media. All rental applicants deserve the same standard of service with the property manager complying with all federal, state and local fair housing laws during the selection of tenants. Applicant must provide written authorization for personal credit reports and/or review of financial statements.
 2. Commercial leases typically utilize the square foot application when determining the rental amount, i.e. a space of 50 feet X 50 feet= 1,500 square feet. Should the monthly rental amount be \$1,850 multiply that amount by 12 months=\$22,000 per year. Divide the total rental amount by the total square feet to determine the annual rate per square foot $\$22,000 \div 1,500 \text{ square feet} = \$14.80 \text{ per square foot}$. To convert to a monthly rate, $\$14.80 \div 12 \text{ months} = \$1.23 \text{ per square foot}$.
 3. Residential leases are based on an annual flat rental amount divided by 12, $\$12,000 \div 12 = \$1,000 \text{ per month}$.
- B. Rent Collection
1. Initiates with the selection process including tenant's former landlord, credit bureau reports and financial references. Time, place, penalties for returned checks, late fees must be stated in the lease agreement prepared by the landlord.
- C. Budgeting and Expense Control Procedures
1. A property management budget is based on current and expected revenues and expenses. Expenses may be fixed such as salaries, taxes and property insurance or variable such as repairs. While fixed expenses are

relatively easy to determine variable expenses require a reserve fund determined by historical data relative to the subject property.

- D. Accounting Procedures
 - 1. The management agreement establishes the agency relationship between the property owner and manager thus the agreement defines the managers accounting duties and responsibilities.
- E. Property Manager/Owner Relations
 - 1. Regularly scheduled meetings with the property owner and manager as outlined in the property management agreement are vital for an open line of communications regarding common objectives.
- F. Hiring and Supervision of Employees
 - 1. Determined by the size of the managed property, however, background checks and former employer reference check are crucial. The property manager must be familiar with workers' compensation laws and should maintain surety bonds covering a property owner against financial losses resulting from an employee's criminal acts or negligence while performing assigned duties.

V. Default, Correction & Notice

- A. Lessee's Default Triggers-
Like the residential eviction, the commercial eviction is also governed by Chapter 57 of the Landlord-Tenant Code. The Commercial Landlord-Tenant relationship, however, is quite different. Issues that do not generally arise in the residential context may come into play, such as responsibility for common area maintenance fees, taxes, insurance and operating expenses. The fundamental principles that govern a commercial eviction or default, however, are basically the same, such as notice, and the opportunity to cure.
 - 1. Eviction-
Non-payment of rent- the statutory remedy of a summary proceeding for possession arising out of a tenant's failure to pay rent is created under 25 Del.C. §5702. This Section provides that if the tenant has wrongfully failed to pay the agreed rent a special proceeding for possession may be maintained.
25 Del.C. §5702 (2). A Landlord is broadly defined by the Code and includes any person authorized to exercise any aspect of management of the premises. 25 Del.C. §5141 (12).
 - 2. Non-Monetary Defaults-
a Commercial Lease may also provide other grounds for default or eviction other than non-payment of rent. Generally these additional

grounds are set forth in the Default Provision, and typically include the following events:

- (a) Bankruptcy or Insolvency;
- (b) Appointment of a receiver for the tenant's assets;
- (c) Assignment by the tenant for the benefit of certain creditors;
- (d) Abandonment or vacancy;
- (e) Default in performance of any tenant's covenants, agreements, or obligations under the lease;
- (f) The tenant has breached its obligation relating to its use of the premises.

B. Lessor's Default Triggers-

Generally, Commercial Leases are provided by the Landlord and are drafted in the Landlord's favor. For this reason, it is not common to have a provision concerning Landlord's Defaults. However, those defaults often involve:

- 1. failure to make improvements or agreed repairs to the property;
- 2. failure of the landlord to enforce an exclusive use provision in favor of the tenant;
- 3. failure to comply with zoning and other governmental laws;
- 4. failure of Landlord to comply with Tenant's signage requirements.

C. Correction of Default (s)-

Most Commercial Lease allow the tenant and the landlord an opportunity to "cure" the breach of the Lease. i.e. either non-payment of rent or violation of a covenant or promise in the Lease. Thus the default provision and the remedy provisions of the Lease should be closely reviewed. These provisions of the Lease may allow the tenant or the landlord an additional 5 to 10 days to cure a non-monetary default after receiving notice of the default. For non-monetary defaults, most Commercial Leases provide a set number of days to cure the default and if the tenant shows good faith in attempting to cure, the lease will provide additional time to the tenant to affect a complete cure of the default.

D. Notification of Default (s)-

Any Notice of Default requirements provided for in the Lease need to be reviewed and complied with before initiating any eviction action. If the Notice provision does not indicate where to send any Notices, then the Notice should be sent to the entity's registered agent, principal place of business or last know address. If the Notice needs to be sent to an individual, then it should be directed to his place of business, residence, or last know address. In addition, it is recommended that the Notice also be sent to the leased premises. All Notices should be either personally delivered with an acknowledgement of receipt, certificate of mailing, or by certified mail return receipt requested. Depending on the form of the Lease, many of the Notice provisions may have different titles or headings or be included in the provisions with different titles or headings. Therefore, it is extremely important to always review the entire lease. For

example, tax obligations may be discussed in a separate tax provision or common area maintenance charges may be addresses in a separate maintenance provision.

- E. Notification of Termination of Lease for Default (s)-
 Providing a “demand letter” or a Notice of Default or Notice of Termination Letter should be sent pursuant to the requirements set forth in the Lease. The purpose of the Notice is to provide the tenant with the actual Notice of the Default and an opportunity to cure under the terms of the Lease. The Notice must be sent to the address listed in the Notice provision in the Lease. If the Lease does not provide an address, Notice should be sent to the register agent or principal place of business of the tenant, or to the residence or the last known address of the tenant, and to the leased premises. The written Notice should also make reference to the applicable cure period as provided in the Lease.
 The Notice must be consistent with the eviction language in the Lease which is generally set forth in the Default, Remedies, or Eviction Provision. The type of Notice given will depend on the remedy the landlord is seeking. For example, the Lease may permit the landlord to either (1) accelerate the rent without obtaining possession (2) re-enter the premises by a summary proceeding for possession, re-let and seek past due rent or (3) terminate the Lease, seek possession, and pay back rent. The Demand Letter should clearly state the Landlord’s intent if the landlord desires to terminate the Lease . Notice should be sent either personally delivered with an acknowledgement of receipt, by certified mail return receipt requested or by certificate of mailing. The Notice should be sent in the above-mentioned manner so that the Landlord or tenant may provide proof of Notice of Default and an opportunity to cure may be demonstrated in court.

VI. Sources of Property Management Business

A property manager’s reputation for successful communications with current and prior clients coupled with the ability to increase income and maintain good tenant relations is an excellent source of new business. Depending on the size of the development and the desire of the client to retain on-site or off-site property management a property manager may retain employees to supervise the daily activities of the client including maintenance, rent collect and landscaping functions. Property managers may be independent or be employed by a management firm representing many clients and are considered general agents.

- A. Condominium/Community Associations
1. May retain an on-site or off-site property manager depending on the size of the condominium/community association and the scope of the property manager’s responsibility. The condominium/homeowners Board of Directors is given the authority via the property owners to make financial decisions deemed to be in the best interest of the condominium/community association including the responsibility of making a property management retainer decisions. Due to health benefits

and other responsibilities associated with providing property managers directly employed by the association many associations are retaining professional property management companies handling many different condominiums/community associations.

- B. Developer/Absentee Property Owners
 - 1. The income expectations of the client must be discussed fully understood and achievable by the property manager before accepting the management responsibility.
 - 2. Written Property Management Agreement
 - a. Legal Description of the property
 - b. Time period of the management agreement and provision for termination
 - c. Manager's responsibilities
 - d. Owners Purpose
 - e. Manager's authority
 - f. Accountability/reporting timeline
 - g. Allocation of costs
 - h. Equal opportunity/Fair Housing Agreement

VII. Risk Management

Due to financial losses that may result from unexpected management situations, the property manager must consider risk management; weighing the options available should something unforeseen take place during the management period. The risk management options include:

- A. Avoid the risk- The property manager must utilize common sense when surveying the managed property and surrounding area including removing hazards that unnecessarily present a risk to those occupying the property.
- B. Control the risk- Based on the size of the managed property, advance preparation is essential for the property manager including but not limited to; 24 hour security monitoring system, interior unit/common area sprinkler systems, and fire containment measures.
- C. Transfer the risk- A vital function of the property manager is to secure adequate insurance to cover perils that could occur on the property. On-site inspection of the property by one or more qualified insurance broker/agent(s) will accomplish this objective.
- D. Retain the risk- Electing to retain the risk with the assumption that the possibility of loss due to an event occurring is minuscule. Unforeseen events can take place, such as

tidal wave; where insurance secured with a large deductible reducing the annual premium may be applicable.

VIII. Insurance Provisions

The intent of insurance within this context should aim to provide financial compensation to an individual or business as a result of a covered loss. The timeframe for compensation should allow minimal disruption due to loss of property and/or business income (termed business interruption). Casualty insurance, such as general liability, further serves to protect assets from legal actions usually related to bodily injury or property damage (to others) as defined in the policy. Employers Liability/Workers Compensation is yet another casualty coverage designed to pay medical bills and loss of wages on behalf of injured employees allowing 'return to work' with minimal financial hardship. Overall, insurance is very broad in scope and more specific research is often needed depending on the type of business and lease provisions. Good planning here can go a long way in preventing financial hardships (i.e. a broken lease) after a property or casualty loss.

A. Fire and Hazard-

Property coverage should be broad enough to cover perils beyond fire and wind damage alone. It is best to specify that buildings and/or contents be insured on a **Special** (formerly termed All Risk) coverage form. This provides quite comprehensive coverage, usually including occurrences well beyond fire such as vandalism, theft or even water damage due to broken pipes. A standard fire or basic policy form will not include such perils.

It is also best to request contents be insured to their **Full Replacement Value**, on a policy noting **Replacement Cost Valuation** which will help assure minimal (if any) depreciation once replaced. Most business and homeowners do not have their insurance limits keep pace with today's replacement cost trends.

B. Consequential-

It is recommended that a business policy have **Loss of Income/Extra Expense** included within the coverage. Quite often, the loss of income will substantially exceed the amount of the contents loss. As an example, a business may only carry a \$100,000. limit of business personal property (contents), however, the resulting income loss for three or four months could be several times that amount for many businesses. Many policies automatically include LI/EE for a maximum of 12 months as opposed to a stated dollar amount which is a plus.

In addition, a business having **Contents of Others** in their care, custody or control should review this coverage limit which is usually stated separate from their own contents limit. There are many ways to accomplish this (bailee's form) but certain businesses such as dry cleaners or repair shops have a significant

exposure and their responsibility for the loss of customers goods may be greater than their own.

C. Contents/personal property-

It is usually specified in a lease that a tenant will take responsibility to insure their own **Business Personal Property (Contents)** along with improvements and Betterments (build-out/customizing) to the leased premises. Often these limits are combined under one contents limit for the tenant.

D. Liability/Workers' Compensation Acts-

Although most leases do not address this coverage, it is law in most states that a business with employees (even part time) carries **Workers Compensation**. This will provide medical benefits and loss of wages resulting from job related injuries or diseases. The premium varies widely depending on the exact job classification of each employee. As an example, the clerical class carries a low rate, usually less than 1% of payroll, where a carpenter is about 20 times higher. Included in the same policy will usually be **Employers Liability** which protects the business against specific types of legal actions by employees.

E. Casualty-

Public Liability/General Liability (in this context) is usually required in a lease. It is important that the landlord specify for the tenant to carry proper limits usually not less than \$1,000,000. per occurrence/ \$2,000,000. aggregate. It is not uncommon that a landlord will require the tenant to name them as Additional Insured on the policy which is usually not expensive. This provides a better chance that a liability action involving the tenant's area will be resolved by the carrier.

The General Liability section of a policy also includes a separate limit for **Fire Damage (or Fire Legal Liability)**. It is widely misunderstood that the tenant's general liability will cover fire damage to the building due to the tenant's negligence, for the portion leased by the tenant (generally the area within the tenants care custody & control). Therefore, the standard \$100,000. limit of Fire Legal Liability may not be adequate to replace the area of leased space. Quite often increased limits of Fire Legal Liability should be requested in an amount great enough to rebuild the leased area. Should a fire caused by the tenant's negligence spread beyond the leased area, the general liability limits usually would apply.

F. Surety Bonds-

Surety Bonds are usually required to protect a party (termed the obligee) from financial insolvency of another party (the principal) for the contractual obligations to complete a contract. Bond requirements vary widely and bond underwriting is reviewed on a financial basis often requiring a financial statement for approval. Fidelity bonds are yet another type that may compensate a business or third party from employee dishonesty. Usually neither is specified in a lease requirement.

G. Claims procedures-

In the case of a loss it is normal course for the party sustaining a loss to contact their own insurance carrier. In the case of a property loss, an adjuster will usually be assigned to determine if the peril causing the damage was within the coverage

scope. Arrangements will then be made with the business owner for the replacement of the item(s). Should an injury occur on the premises such as a 'slip and fall' both the landlord and tenant should report the occurrence to their carriers. Often times a legal action will request that both to respond with their insurance carrier information. On occasion, one carrier may subrogate against the other in either property or casualty losses.

IX. Review a Property Management Agreement

X. Discussion, Questions & Answers

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